**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR**
**&**
**THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU**

**TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928**

**RCRev..No. 35 of 2005(C)**
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**RCA.5/2002 of THE RENT CONTROL PAPELLATE AUTHORITY (DISTRICT JUDGE ), WAYANAD,KALPETTA**
**RCP.23/2001 of THE RENT CONTROLLER( MUNSIFF MAGISTRATE), SULTHAN BATHERI**
**.....**

**REVISION PETITIONER:**
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**PEETHAMBARAN, S/O. MADHAVAN,**
**KEEZHANIKKAL HOUSE, KARACHAL,**
**AMBALAVAYAL AMSOM DESOM, S. BATHERY TALUK,**
**WAYANAD DISTRICT.**

**BY ADV. SRI.M.C.SEN**
**SRI.M.P.SREEKRISHNAN**
**SMT.SHAHNA KARTHIKEYAN**

**RESPONDENTS: RESPONDENT:**
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**SHIJU MATHEW, S/O. MATHEW,**
**CHEBBALAYIL HOUSE, VAZHAVATTA P.O.,**
**MUTTIL AMSOM DESOM, VYTHIRI TALUK,**
**WAYANAD DISTRICT.**

**BY ADV. SRI.T.L.ANANTHASIVAN**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 16/01/2007, ALONG WITH RCR NO. 346 OF 2004 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**K.A.ABDUL GAFOOR &**

**K.R. UDAYABHANU, JJ.**

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**R.C.R.NOS. 346 OF 2004 & 35 OF 2005**

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**DATED THIS THE 16TH DAY OF JANUARY 2007**

**ORDER**

**Udayabhanu,J.**

R.C.R.No.346/2004 is filed by the revision petitioner/tenant questioning the concurrent findings of the courts below with respect to the arrears of rent. It is submitted at the time of hearing that the entire rental arrears has been remitted and the same was not disputed. Hence nothing survives to be decided in this rent control revision. Hence, the same is dismissed.

2. R.C.R.No.35/2005 is filed by the landlord whose application under Section 11(8) of the Kerala Buildings (Lease & Rent Control) Act, 1965 [Act 2 of 1965] {for short 'the Act'} seeking vacant possession of the shop room situated adjacent to his own shop room for the purpose of the residence of his family so that he can attend the business in a better way. Both the courts below rejected his prayer as it was found not

established that he is residing in a rented house. It is the case of the landlord/revision petitioner that as his younger brother got married and as the tharwad house was found not sufficiently spacious, himself and his family shifted from the family house and is living in a rented house which is situated far away from the business premises. Hence, he is unable to bestow sufficient attention to his business. What he wants is to convert the shop room occupied by the respondent/tenant into a residential accommodation and put up his family in the above portion of the building. He had taken out a commission and the report is marked as Ext.C1. The commissioner was examined as PW3. The Commissioner has reported that the building in which the shop room sought to be evicted consisted of three shop rooms and in one of the same the petitioner is conducting a provision store and in another room a different tenant is conducting a hotel. The Commissioner has also reported that the petition schedule premises extent 2.6 metres and there is a lean-to also. He has noted that if a door is fitted on the wall in between both the shop rooms, there can be an access to the shop from the residential space and the lean-to can be used as kitchen. But

there is no other facilities for the primary needs. Those have to be constructed. The respondent has contended that the petitioner is a rich man and by no means he would stay in a shop room with his family and that he is having other buildings as well. He has denied the contention that the landlord is residing in a rented premises. It is also noted that the petitioner owned a vehicle and there will be no difficulty to reach the business premises. Apart from the testimony of PW1, the landlord, the only other evidence is that of PW2 who is a Panchayat member, who although has stated that the petitioner/landlord is residing in a rental house, in the cross examination he has stated that it is only his information that the petitioner is residing in a rented house. There is nothing to show that he had got direct knowledge about the residence of the landlord/petitioner in a rented house. Absolutely no objective evidence has been adduced with respect to the rental accommodation allegedly the landlord is using. It is in the above circumstances, the courts below were inclined to disbelieve the version of the petitioner/landlord that he is residing in a rented accommodation. Evidently, the petitioner could have adduced

better evidence as the very fact of his separate residence is disputed and as the same is the very basis of the rent control petition and as bona fides of the need is required to be established for allowing an application under Section 11(8) of the Act. The courts below cannot be found fault with in this regard.

In the circumstances, we are not inclined to disturb the findings of the Rent Control Court as well as that of the Appellate Authority rejecting the prayer of the revision petitioner under Section 11(8) of the Act. Hence, R.C.R.No.35/2005 is dismissed.

Sd/-

**K.A.ABDUL GAFOOR**
**JUDGE**

**Sd/-**
**ks.** **K.R.UDAYABHANU,**
**JUDGE**

**TRUE COPY**

**P.S.TO JUDGE**